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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

NOV 27 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	MM Docket No. 01-62
)	RM-10053
Amendment of Section 73.202(b),)	RM-10109
Table of Allotments)	RM-10110
FM Broadcast Stations)	RM-10111
(Ardmore, Brilliant, Brookwood, Gadsden,)	RM-10112
Hoover, Moundville, New Hope, Pleasant)	RM-10113
Grove, Russellville, Scottsboro, Troy,)	RM-10114
Tuscaloosa and Winfield, AL; Okolona and)	RM-10116
Vardamann, MS; Linden, McMinnville,)	
Pulaski and Walden, TN)	

To: Media Bureau

PARTIAL OPPOSITION TO PETITION FOR RECONSIDERATION

Buffalo River Broadcasters ("BRB"), by its attorney, hereby respectfully opposes the October 15, 2002 ~~"Petition~~ *For Reconsideration And Joint Request For Approval of Option Agreement*" ("Petition") submitted by STG Media, LLC ("STG") and Pulaski Broadcasting, Inc. ("PBI") (jointly referred to herein as the "Petitioners") in the above-captioned proceeding to amend the FM Table of Allotments. BRB opposes the *Petition* to the extent that it asks the Bureau to set aside that aspect of the *Report and Order*, DA 02-2099, released August 30, 2002, *modified by Erratum*, DA 02-2735, released October 18, 2002 ("Report and Order"), which adopted STG's counter-proposal to allot Channel 278A to New Hope, AL, and denied the requests set forth in the original rule making petition to substitute Channel 278A for Channel 252A at Scottsboro, AL, reallocate Channel 252A, Pulaski, TN to Ardmore, AL on Channel 252C1, and modify the licenses for WKEA-FM, Scottsboro, AL, and WKSR-FM, Pulaski, TN.

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In Opposition thereto, the following is respectfully shown:

The petition for rule making which commenced this extremely complex proceeding more than two years ago originally proposed eight tightly intertwined changes to the FM Table of Allotments. Numerous counterproposals were filed, and a record exceeding a thousand pages was generated.

BRB timely filed a counterproposal in the proceeding, seeking to allot Channel 253A to Linden, TN (“Linden”), as Linden’s first local aural service. BRB’s counterproposal was mutually exclusive with the prong of the original petition proposing to substitute Channel 252C1 for Channel 252A at Pulaski, TN (“Pulaski”), reallocate Channel 252C1 to Ardmore, AL (“Ardmore”), and modify the license of WKSJ-FM, Pulaski, to operate on Channel 252C1 at Ardmore.

The Ardmore proposal required an ancillary allotment change, also put forth in the original petition, to substitute Channel 278A for Channel 252A at Scottsboro, AL (“Scottsboro”), and modify the license of WKEA, Scottsboro, accordingly. STG, one of the Petitioners here, propounded a counterproposal that was mutually exclusive with the Scottsboro proposal. Specifically, STG sought allotment of Channel 278A to New Hope, AL (“New Hope”), as that community’s first local aural service. STG argued that the Channel 278A allotment to New Hope, as compared to the Ardmore and Scottsboro allotments, would be the preferential allotment.¹ STG noted that the population of Ardmore was “significantly smaller” than the population of New Hope, and that New Hope should therefore be found *to* be the preferred community for allotment purposes,² citing *Alva, Mooreland, Tishomingo, Tuttle, and Woodward, Oklahoma*, 2000 FCC

¹ *Comments and Counterproposal of STG Media, LLC* (dated April 24, 2001) at page 2

² *Id.*

LEXIS 6810 (released December 22, 2000) (“determining factor in comparing competing proposals for a first local aural service is the size of the community of license”) (citing *Sparta and Ruckhead, Georgia*, DA 00-2481 (released November 3, 2000) and *Marks and Woodsville, Florida*, 12 FCC Rcd 11 1957 (1997)).³ STG further claimed that:

[T]he allotment of Channel 278A to New Hope as its first local service is preferable to the mere substitution of that channel for an existing station in Scottsboro.⁴

STG unequivocally represented to the Commission that:

... [U]pon adoption of a Report and Order modifying the FM Table of Allotments and the opening of a new auction proceeding for the allotment to New Hope, STG Media will promptly file and participate in the auction for the new station. In the event STG Media is successful in the auction, STG Media will promptly file an application for construction permit for the new facility. STG Media further states that upon the grant of the construction permit for the new facility for New Hope, STG Media will construct the facility and commence operation promptly.⁵

STG ultimately was successful in obtaining the Channel 278A allotment at New Hope.⁶ The Bureau agreed with STG’s assertion that the New Hope allotment should be preferred, based on New Hope’s 2000 U.S. Census population of 2,539 persons, compared to Ardmore’s 2000 U.S. Census population of less than half that (1,034 persons), and consistent with cited allotment decisions⁸

³ *Id.* at note 5.

⁴ *Id.* at page 4.

⁵ *Id.* at page 3.

⁶ *Report and Order* at paras. 25-26.

⁷ *Id.*

⁸ *West Liberty and Richwood, Ohio*, 6 FCC 6084 (Alloc. Br., 1991); *Three Oaks and Bridgman, Michigan*, 5 FCC Rcd 1004 (Alloc. Br., 1990); *Clarksville and Lanesville, Indiana*, 4 FCC Rcd 4968 (Alloc. Br., 1989).

In view of the adoption of the New Hope allotment propounded by STG, the Bureau did not allot Channel 252C1 to Ardmore.’

The other Petitioner here, PBI, is the licensee of WKSR-FM, which is licensed on Channel 252A at Pulaski. If the proposed allotment of Channel 252C1 to Ardmore had prevailed, the allotment underlying the WKSR-FM license would have been increased to Channel 252C1, and the WKSR-FM license community would have been changed to Ardmore. STG and PBI have now joined together on reconsideration to request the Bureau to rescind the New Hope allotment that STG had successfully championed. STG has abandoned its commitment to pursue establishment of the New Hope station. The Petitioners would now have the Bureau instead substitute Channel 278A for Channel 252A at Scottsboro (and modify the WKEA license) so that the allotment underlying WKSR-FM can be reallocated from Channel 252A at Pulaski to Channel 252C1 at Ardmore (and the WKSR-FM license modified accordingly).

Amazingly, the Petitioners do not claim that reconsideration is warranted based on any alleged Bureau error or any alleged public interest considerations newly brought to light. Rather, it is disclosed in the Petition that STG has obtained an option to acquire 100% of the stock of PBI. In fact, the Option Agreement submitted with the Petition reflects that STG has already paid a significant signing fee for the option and has placed a quarter of a million dollars in escrow, looking toward a multi-million dollar transaction. A stated condition of the requirement to close the stock transaction is finality of an order reallocating PBI’s Pulaski facility to Ardmore on Channel 252C1.

⁹ *Id.*

In other words, the Petitioners are asking the Bureau to jettison its painstaking public interest determination with respect to New Hope vis-a-vis Scottsboro and Ardmore, and to upend the allotment scheme developed after notice and comment in this complex proceeding, for the purpose of facilitating the Petitioners' private stock deal!

Under *Winslow, Camp Verde, Mayer and Sun City West, Arizona*, 16 FCC Rcd 9551 at para. 7 (Alloc. Br., 2001), reconsideration of rule making action is warranted only where the petitioner cites "error of fact or law" or presents "facts or circumstances which raise substantial or material questions of fact which otherwise warrant Commission review of its prior action." The instant Petition fails to satisfy that standard. Rather, the Petitioners are requesting reconsideration solely to further their own private commercial goals. Under the circumstances, the Petitioner's reconsideration request is entirely unjustified.

The Petitioners' citation to *Mount Pleasant and Eogata, Texas*, 16 FCC Rcd 7858 (2001), in support of their plea for reconsideration, is inapposite. In *Mount Pleasant*, unlike the instant case, solid new evidence impacting the public interest was presented on reconsideration. Specifically, it was shown on reconsideration that the requested action would allow technical improvements to be made to a then-unbuilt adjacent channel facility, in the public interest. In contrast, the instant reconsideration petition rests not on public interest matters, but on private business developments.

The Petitioners speculate that a consequence of STG's (voluntary) withdrawal of its expression of interest in the New Hope allotment is the **risk** that the New Hope allotment might ultimately lie vacant, citing *Detroit, Howe and Jacksboro, Texas*, 13


FCC Rcd I5591 (1991). BRB will remove the need for such speculation. BRB hereby represents that it intends to apply for Channel 278A at New Hope.

In sum, neither the facts nor the law warrant rearrangement of any aspect of the intricate allotment scheme that the Bureau adopted in furtherance of the public interest in this complex multiple allotment proceeding.

WHEREFORE, the premises considered, it is respectfully submitted that the Petition For Reconsideration should be denied to the extent requested herein.

Respectfully submitted,

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November 27, 2002

Certificate of Service

I hereby certify that a copy of the foregoing "Partial Opposition to Petition For Reconsideration" was sent by hand delivery or U.S. Mail, postage prepaid, this 27th day of November, 2002, to the following:

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